



California Fair Political Practices Commission

June 25, 1986

Donna Shannon Scott, Esq.
ACTEB/ACAP Agency Counsel
Alameda County Training and Employment Board
Associated Community Action Program
22225 Foothill Blvd.
Hayward, CA 94541

Re: Your Request For Advice
Our File No. A-86-167

Dear Ms. Scott:

Thank you for your request for advice on behalf of the Alameda County Training and Employment Board regarding the conflict of interest provisions of the Political Reform Act (the Act).^{1/}

QUESTIONS

1) May public employees or members of Private Industry Councils (PICs) serve as members of a GAIN Advisory Council which is being formed by the Alameda County Social Service Agency?

2) If public employees or members of PICs may serve as members of the GAIN Advisory Council, are they required to disqualify themselves from participating in decisions to allocate GAIN funds when the public entity they represent will seek to obtain those funds?

CONCLUSION

1) Under the Act, public employees or members of PICs may serve as members of a GAIN Advisory Council which is being formed by the Alameda County Social Service Agency.

2) The public employees or PIC members need not disqualify themselves from participating in decisions to allocate GAIN funds when the public entity they represent will seek to obtain those funds.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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ANALYSIS

Initially, we note that you referred in your letter to Section 1090.1 and the conflict of interest exceptions provided to PIC members under that statute. The question of whether there may be a conflict of interest under Section 1090 or a legal requirement other than those imposed by the Political Reform Act is a question which the Fair Political Practices Commission has no jurisdiction to decide. The Commission may advise you only as to the conflict of interest provisions of the Act pursuant to Section 83114(b). Therefore, the following advice does not include any analysis of the effect of Section 1090.1 or other similar statutes on the situation you have presented.

According to the facts you gave us, the Alameda County Training and Employment Board (ACTEB) is one of the two Service Delivery Areas for Alameda County under the Job Training Partnership Act of 1983 (29 USC 1501 et seq.) and its companion state legislation, the Family Economic Security Act (Unemployment Insurance Code Section 15000 et seq.). The ACTEB service delivery area's program of job training is designed and monitored by a Private Industry Council (PIC), which includes representatives from large and small businesses in the private sector, educational agencies, organized labor, rehabilitation agencies, community-based organizations, economic development agencies, the public employment service, and child care resource and referral agencies, and public assistance recipients. See Unemployment Insurance Code Sections 15030-15034. The PIC also makes decisions to fund various contractors which provide classroom training, and allocates blocks of funds to the ACTEB service delivery area, which, in turn, negotiates "on the job training" contracts with local employers. Under the Political Reform Act, PICs are considered local government agencies, and the PIC members are public officials. Sections 82041 and 82048; see Siegel Opinion, 3 FPPC Opinions 62 (No. 76-054, July 6, 1977) (copy enclosed).

Under the recently enacted Greater Avenues for Independence (GAIN) legislation, certain welfare applicants and recipients will be referred to mandatory job training programs. Welfare and Institutions Code 11320 et seq. In Alameda County, the GAIN program will be administered by the Alameda County Social Services Agency. Employment and job training services for Alameda County GAIN participants will, in all probability, be performed by ACTEB, under contracts with the Alameda County Social Services Agency.

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The Alameda County Social Services Agency is forming a GAIN Advisory Council to assist them in the implementation of GAIN. There is no statutory requirement for establishment of a GAIN Advisory Council. It appears that the GAIN Advisory Council would consist of members representing various public and private entities. The Council would design the specific GAIN program for Alameda County, and would make decisions concerning the particular types of job training to be provided and the amount of GAIN funds to be allocated for each aspect of the Alameda County GAIN program.

You have stated that because the GAIN Advisory Council would be similar to a PIC in function, you have concluded it would be a public agency within the meaning of the Act. Based on the Siegel Opinion, supra, we agree with your conclusion that the GAIN Advisory Council would be a public agency, and its members public officials under the Act.

The Alameda County Social Services Agency has promulgated a conflict of interest policy for the GAIN Advisory Council. Under the policy the County Social Services Agency has drafted, each member of the GAIN Advisory Council must agree in advance that the entity he or she represents will not seek or accept any GAIN funds. If ACTEB or the ACTEB PIC will be administering the job training programs under contract with the County Social Services Agency, this policy effectively precludes any participation on the GAIN Advisory Council by salaried employees of ACTEB or members of the ACTEB PIC. You question whether this policy is required by the Act.

To address this concern, we look to Section 87100, which provides:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use this official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87100 does not prohibit a public official from serving as a member of a public agency, but simply requires the official to disqualify himself from participating in any decision in which he has a financial interest. Thus, the Political Reform Act does not support the policy of the Alameda County Social Services Agency insofar as that policy prohibits certain persons from serving on the GAIN Advisory Council.

Pursuant to Section 87103, an official has a financial interest in a governmental decision, within the meaning of Section 87100, if the decision would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

87103(a)-(e).

As your question relates to conflicts of interest for employees and members of a local government agency, we must discuss Section 87103(c) and (d). Pursuant to Section 87103(c), a public official's sources of income may create a conflict of interest. However, in Section 82030(b)(2), "income," for purposes of the Act, does not include salary and reimbursement for expenses or per diem received from a state, local or federal government agency. Therefore, Section 87103(c) does not require an employee of a local government agency, such as ACTEB, to disqualify him or herself from participating in decisions affecting his or her employer.

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Pursuant to Section 87103(d), a public official may have a conflict of interest as to decisions affecting any business entity in which he is a director, officer, partner, trustee, employee, or holds any position of management. However, a "business entity," for purposes of the Act, includes only those organizations or enterprises operated for profit, and does not include a government agency. Section 82004. Therefore, Section 87103(d) does not require an employee or officer of a government agency, such as ACTEB or the ACTEB PIC, to disqualify him or herself from participating in decisions affecting the agency.

Accordingly, Sections 87100 and 87103 would not require ACTEB employees or members of the ACTEB PIC to disqualify themselves from participating in decisions to allocate GAIN funds when ACTEB or the ACTEB PIC may be the recipient of some of those funds.

Based on the preceding analysis, we conclude that the Political Reform Act does not prohibit employees of ACTEB or members of the ACTEB PIC from serving on the GAIN Advisory Council, even though the agency they represent may become a recipient of GAIN funds. Furthermore, we conclude that ACTEB employees and members of the ACTEB PIC would not have a conflict of interest under the Political Reform Act with regard to decisions to allocate GAIN funds to ACTEB or the ACTEB PIC.^{2/} Thus, the Alameda County Social Services Agency's conflict of interest policy for GAIN Advisory Council members is not supported by the Political Reform Act. As discussed above, we have not considered whether there is any other law which would support the conflict of interest policy proposed by the Alameda County Social Services Agency.

^{2/} I have not addressed the question of whether a member of the ACTEB PIC who represents a private employer may participate in decisions to allocate public funds to his or her employer. I have enclosed a copy of Commission regulation 2 Cal. Adm. Code Section 18702.1, which provides that a public official must disqualify himself from participating in any decision when a source of income of \$250 or more "appears before" him by filing an application or similar request. Please contact me if you would like to discuss this situation in greater detail.

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If you have any further questions regarding this advice,
please call me at (916) 322-5901

Sincerely,

Kathryn E. Donovan

Kathryn E. Donovan
Counsel

Legal Division

KED:DL:sm



Alameda County Training and Employment Board

Associated Community Action Program

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Governing
Board

May 12, 1986

Donald W. McGue
Chairman
Councilman
San Leandro

Shirley D. Sisk
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Councilwoman
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Bill Ball
Councilman
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Judy Bartoli
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Edward Campbell
Supervisor
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Nellie M. Hannon
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Emeryville

Matt Jimenez
Councilman
Hayward

Tom Kitayama
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Hadi Monsef
Councilman
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Robert E. Nichols
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Albany

Skip Rhodes
Councilman
Piedmont

Walter C. Wood
Councilman
Pleasanton

Robert L. Bloom
Executive Director

Kathy Donovan, Esq.
Fair Political Practices Commission
State of California
100 K Street
P. O. Box 807
Sacramento, California 95804

Re: Request for advisory opinion

Dear Ms. Donovan:

During our telephone conversation of April 1, 1986, you kindly offered to furnish me with a written opinion regarding the matter we discussed. I would now like to take advantage of your offer.

In summary, the issue is whether salaried public employees and/or members of Private Industry Councils may be members of a GAIN Advisory Council which is being formed by the Social Services Agency of the County of Alameda, and under what circumstances, if any, they would be precluded on voting on matters before the GAIN Advisory Council.

By way of background, the County of Alameda has two gubernatorily designated "service delivery areas" (SDAs) under the Job Training Partnership Act of 1983 (hereinafter "JTPA", 29 USC 1501 et. seq.), and its companion state legislation, the Family Economic Security Act, ("FESA") Unemployment Insurance Code 15000 et. seq. The City of Oakland is an SDA in its own right, and the remainder of the County of Alameda is serviced by the Alameda County Training and Employment Board (ACTEB), which is a consortium of the County of Alameda and thirteen municipal governments. The ACTEB SDA is a public joint powers agency, and the City of Oakland is, of course, a municipality. Both SDAs operate independently of each other, and both SDAs have Private Industry Councils (PICs), which are considered "arms of local government" [65 Ops AG 41, 48, (1982), citing Estate of Hendricks, 77 CA 647, 651 (1947); FPPC memorandum dated March 7, 1984] and thus subject to the Political Reform Act. Among the responsibilities of the PICs is the development of job training plans, voting on decisions to fund various contractors which provide classroom training, and allocating funds to the SDAs for the purpose of entering into "on the job training" (OJT) contracts with local employers.

Because of the statutory purpose of PICs, [29 USC 1513, UI 15000, 15032], to wit, the obvious need for active participation in job training programs by private sector employers, who are, after all, the ultimate consumers of JTPA program "products", Government Code 1091.1 provides an exception for PIC members to the restrictions imposed by Government Code 1090. Thus, PIC members may enter into OJT contracts within their SDAs since the wage subsidies paid during the training period are, by statutory definition, compensation for the extraordinary out-of-pocket costs associated with training disadvantaged participants [29 USC 1531(d)(3)(9)]; and are therefore not considered as having a "material financial effect" on a PIC member's private economic interest. In this regard, it should be noted that OJT funds are allocated in blocks to the SDAs, who have the responsibility for developing individual OJT slots and negotiating contracts with potential OJT employers, so PIC members are not voting directly on contracts with specific employers, nor it is known in advance with which employers those contracts will be negotiated. It should also be noted that public educational institutions are represented on PICs, and that salaried employees of such public institutions routinely vote on funding decisions involving them, which is not prohibited by the Political Reform Act.

The recently enacted Greater Avenues for Independence (GAIN) legislation, Welfare & Institutions Code 11320 et. seq., provides that certain welfare applicants and recipients will be referred to mandatory job training programs. The GAIN legislation is to be administered by the social services departments of the counties, [W&I Code 11320.2(a), (b)] and the legislation mandates a cooperative effort among social services departments, public educational institutions, JTPA administering entities, and PICs [UI Code 15006; W&I Code 11320.2(b)]. Given the extensive experience of the SDAs and the PICs in administering job training programs and related services, such as job development, job search assistance and placement, [UI 15020] and the fact that SDAs have been serving welfare recipients for many years, both under JTPA and its predecessor statute, CETA, [(UI 15006, 15027, 15063, 15070)] the employment and job training services for Alameda County GAIN participants will, in all probability, be performed by the ACTEB and City of Oakland SDAs under contracts with the Alameda County Social Services Agency (SSA).

In connection with the implementation of GAIN, the SSA is in the process of forming a GAIN Advisory Council, although there is no requirement in the GAIN legislation that such a Council be formed, which would be similar in function to a PIC, and which would undoubtedly be a public body within the meaning of of the Political Reform Act (PRA) and California Administrative Code 18730 et. seq., and thus subject to the PRA. In conjunction therewith, the SSA has promulgated a Conflict of Interest Policy, a copy of which is attached hereto. Whether this Policy meets the requirements of the Political Reform Act and applicable California Administrative Code regulations is questionable. Under this Policy, anyone who sits on the GAIN Advisory Council must agree in advance that the entity the individual represents will not seek or accept any GAIN funds. Needless to say, this effectively precludes any participation by either salaried public employees of ACTEB or the City of Oakland and members of the ACTEB or Oakland PICs, as well as other interested public

entities, such as local school districts, and other public education entities, and would seem to be in conflict with the statutory requirement of interagency cooperation.

ACTEB and the City of Oakland have taken the position that neither the Political Reform Act nor Government Code 1091.1 prohibits such participation. Although the SSA concedes that there is no statutory prohibition against membership for such individuals, it takes the position that such members would be required to disqualify themselves so frequently that their participation would be severely limited. Both ACTEB and the City of Oakland disagree with the County's position in light of the fact that public employees, such as ACTEB or City of Oakland staff or representatives of school districts or other public entities, do not, as a matter of law, have a "material financial interest" within the meaning of the Political Reform Act in any funding decisions that would benefit their public entity employers, and would therefore not be prevented from voting on such funding issues. By the same token, Government Code 1091.1 would seem to eliminate any barriers to participation by PIC members, except possibly in rare and isolated situations.

In addition to the foregoing, the County has also taken the position that section 23-602 ("Code of Conduct") of the State's social services regulations regarding conflicts of interest in the procurement of services by county social services departments, a copy of which is attached, would also bar participation by ACTEB, the City of Oakland, and PICs. ACTEB and the City of Oakland take the position that the regulations do not apply to other public entities, or to PICs, and that SSA's interpretation does not take into account the provisions of the Political Reform Act or Government Code 1091.1, or the underlying rationale for both statutes, to wit, the public interest in prohibiting members of public bodies from using their positions to enhance their private economic interests. Cf. Thomson v. Coll, 38 C3d 633 (1985), People v. Barenfeld, 203 CA2d 166 (1962), Terry v. Bender, 143 CA2d 198 (1956).

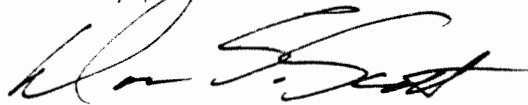
Nor does the SSA's position take into account the fact that members of a public body may be representatives of an industry that is interested in the activities of that body: Consumer's Union v. California Milk Advisory Board, 82 CA3d 433 (1978), Mt. Vernon Memorial Park v. Board of Funeral Directors and Embalmers, 79 CA3d 874 (1978).

In order to facilitate the formation of the GAIN Advisory Council, public entities and PICs are presently participating in a GAIN Interagency Task Force which is separate and distinct from the GAIN Advisory Council, with the understanding that if there is no legal objection to participation by SDAs, other public entities and PICs, the GAIN Interagency Task Force may eventually be merged with the GAIN Advisory Council. To this end, we would appreciate having the FPCC's opinion as to the legality of such participation on the GAIN Advisory Council by salaried public employees and PIC members, and whether the imposition of a "no GAIN funding" requirement on GAIN Advisory Council members is required by either the PRA or Government Code 1090 or 1091.1.

Your assistance in this matter will be greatly appreciated, and if you have any questions, please contact me at (415) 881-6081; Ralph Wheeler, Esq.,

Office of the City Attorney, City of Oakland at (415) 273-3601; or Eric Chambliss, Esq., Office of County Counsel, County of Alameda, at (415) 874-7272.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Donna Shannon Scott". The signature is fluid and cursive, with the first name "Donna" being more prominent.

DONNA SHANNON SCOTT, ESQ.
ACTEB/ACAP Agency Counsel

cc: Ralph Wheeler, Esq.
cc: Eric Chambliss, Esq.
cc: Robert L. Bloom

Greater Avenues for Independence (GAIN)

ALAMEDA COUNTY GAIN ADVISORY COUNCIL

Conflict of Interest Policy

To avoid conflicts of interest on the part of GAIN Advisory Council members, a conflict of interest policy has been established which is based upon the California Government Code. In summary, this policy provides that:

A compensated officer or employee of any organization intending to apply for GAIN funding during a given funding cycle cannot be a Council member during the planning process for that funding cycle;

Noncompensated officers and employees of such organizations can be members of the Council, but they must disclose their affiliation(s) and they are prohibited from participating in any Council activity which directly relates to any specific Service Activity for which the affiliated organization intends to request GAIN funding; and,

Organizations which have officers or employees who violate these prohibitions shall not be eligible to apply for or to awarded GAIN funds during the applicable funding cycle.

The enclosed "Conflict of Interest Declaration" further explains this policy by providing the specific mechanism for its implementation.

The following sections of the California Government Code provide the statutory basis for the Agency's conflict of interest policy:

1090. Conflicts of interest: contracts, sales and purchases

"... county ... officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members ..."

(Advisory body members have been found by the courts to be such officers (City Council v. McKinley, 80 Cal.App.3d 204 (1978)). If a Council member's financial interest is considered "remote" and he or she does not vote or participate in the decision to make the recommendation, no violation of section 1090 would occur.

1091. Remote interest of officer or member

(a) "An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of such interest is disclosed to the body of the board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest."

(b) "as used in this article, 'remote interest' means any of the following:

(1) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5."

1091.5 Interest in contract; Quantity and quality of interest; Relation to contracting party

(a) "An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(7) That of nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records.

(8) That of noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records.

For purposes of this paragraph an officer is 'noncompensated' even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties of his or her office."

1097. Penalty for violations

"Every officer or person prohibited by the laws of this state from making or being interested in contracts ... who willfully violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state."

ALAMEDA COUNTY Greater Avenues for Independence (GAIN)
Conflict of Interest Declaration for Advisory Council Members

Please complete all of the following sections.
Indicate "none" when applicable.
Attach additional pages if necessary.

1. List the names of all nonprofit, tax-exempt corporations and other business entities of which you are a COMPENSATED officer or employee and the title of your position.

Organization

Title

Your interest in each of the above listed organizations is considered to be greater than a "remote interest". Consequently, there is a conflict of interest between your participation on the GAIN Advisory Council and your compensated position with each organization. By virtue of your participation in any manner on this Advisory Council, each of the above organizations shall not be eligible to apply for or to be awarded GAIN funds.

- 2a. List the names of all nonprofit, tax-exempt corporations and other business entities for which you are a NONCOMPENSATED officer, member or employee and the title of your position.

Organization

Title

- 2b. For each of the organizations listed in item 2a., list each and every Service Activity listed on Attachment A for which the organization will apply for or seek award of GAIN funding.

Organization

Title

You are considered to have a "remote interest" in each of the above listed Service Activities. Consequently, there is not a conflict of interest between your participation on the GAIN Advisory Council during its planning process for GAIN and your noncompensated position with that organization, PROVIDED THAT ALL OF THE FOLLOWING CONDITIONS ARE MET:

- (1) Your "remote interest" is noted in the official Advisory Council records via Agency acknowledgment (signature) of this signed declaration;
- (2) You disclose your remote interest to the Advisory Council;
- (3) You declare conflict of interest and refrain from participating in Advisory Council discussions concerning each listed Service Activity or from attempting to influence other Advisory Council members, and
- (4) You declare conflict of interest and abstain from voting on any issue directly related to each listed Service Activity.

Futhermore, should any of the listed organizations apply for GAIN funding for a Service Activity not listed above and for which Advisory Council action included your vote, the organization shall not be eligible to apply for or to be awarded GAIN funds for that specific Service Activity.

By my signature below, I attest that the above information is correct and complete as requested. I understand that failure to fully disclose my being an officer, member or employee of any organization later applying for or seeking award of GAIN funds shall be sufficient grounds for that organization to be ineligible to apply for or to be awarded GAIN funds in Alameda County.

GAIN Advisory Council Member: Printed Name and Signature Date

Certifying Signature, Organization Representative Date

Agency Staff Signature Date

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•1 The county shall maintain a written code or standard of conduct that shall govern the (performance) of its officers, employees and agents engaged in the awarding and administration of contracts that are subject to Chapter 23-600.

Handwritten: 23-602 is not a regulation

•2 The code or standard shall provide for disciplinary actions to be applied for violations of such code or standard by the county's officers, employees, and agents, including contractors and their agents.

•21 Such disciplinary actions shall be required to the extent permissible under the county's laws, rules, or regulations.

•3 The county's officers, employees and agents, including contractors and their agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

•4 No employee, officer, or agent of the county shall participate in the selection, award, or administration of a contract subject to Chapter 23-600 where any of the following has a financial or other interest in that contract:

•41 The employee, officer, or agent.

•42 Any member of his or her immediate family.

•43 His or her business partner.

•44 An organization in which any of the above is, or has been during the previous 12 months, an officer, director, board member, employee or consultant.

•45 A person or organization with whom any of the above individuals is negotiating employment or has any arrangement concerning prospective employment.

•46 Other interests as the county may elect to specify in its Code of Conduct.

•5 Counties shall follow national policy to award a fair share of business to small, minority, and women-owned firms. The affirmative steps that shall be taken towards this goal are set forth in 45 CFR Part 74, Subpart P, Appendix G.9, and 7 CFR 277.14(e).



California Fair Political Practices Commission

May 19, 1986

Donna Shannon Scott
Alameda County Training
and Employment Board
22225 Foothill Boulevard
Hayward, CA 94541

Re: 86-167

Dear Ms. Scott:

Your letter requesting advice under the Political Reform Act has been received on May 15, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

Kathryn E. Donovan

Kathryn E. Donovan
Counsel
Legal Division

by jeh

KED:plh